The Park Associates, Inc., d/b/a Hill Park Health Care Center *and* Local 200A, Service Employees International Union, AFL–CIO and Service Employees of Upstate New York Pension Fund. Cases 3–CA–20898, 3–CA–21073, and 3–CA–21266

June 20, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND TRUESDALE

On December 10, 1998, Administrative Law Judge Karl H. Buschmann issued the attached decision. The Respondent filed exceptions, a supporting brief, and a reply brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record[1] in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.[2]

The Respondent excepts to the judge's findings that it unlawfully relied on a decertification petition when it refused to recognize and bargain with the Union on September 4, 1997. We agree with the judge that the Respondent unlawfully refused to recognize and bargain with the Union, but for the reason discussed below. Our finding that the Respondent was not privileged to rely on the petition in refusing to bargain with the Union is based on the "successor bar" rule, adopted by the Board in *St. Elizabeth Manor, Inc.*, 329 NLRB 341 (1999), which issued after the judge's decision in this case.

In *St. Elizabeth's Manor, Inc.*, the Board held that a petition challenging a union's majority status is precluded for a reasonable period after a successor employer's obligation to recognize an incumbent union is triggered:

> [O]nce a successor's obligation to recognize an incumbent union has attached (where the successor has not adopted the predecessor's contract), the union is entitled to a reasonable period of bargaining without challenge to its majority status through a decertification effort, an employer petition, or a rival petition.[8]

329 NLRB 344.[3]

In the instant case, the Respondent concedes that it is a successor to Hill Haven under *Burns Security Services*, 406 U.S. 272 (1972). Further, the judge found and we agree that the Respondent is a "perfectly clear" successor required to maintain employees' existing terms and conditions of employment and obligated to bargain with the Union about any changes in those terms and conditions.[4]

[1] The Respondent's request for oral argument is denied as the record, exceptions and briefs adequately present the issues and the position of the parties.

[2] Contrary to our dissenting colleague, we agree with the judge that the Respondent's posting of a wage and benefits package that on its face limited eligibility to nonunion employees and distribution of a pamphlet notifying employees of the "1–800 hotline" for purpose of raising employment-related concerns violated Sec. 8(a)(1) of the Act.

It is well settled that an announcement of benefits restricted to nonunion employees is, under most circumstances, a per se violation of the Act. *Libby-Owens-Ford Co.*, 285 NLRB 673 (1987); *Alaska Pulp Corp.*, 300 NLRB 232 (1990), enfd. mem. 972 F.2d 1341 (9th Cir. 1992). In the instant case, the nonunion wage and benefit summary was posted shortly after the Respondent effectuated the purchase and during the critical period before the decertification election. The summary described a merit raise program (for nonunion employees) which held out the possibility of raises higher than those attainable under the existing wage structure if employees withheld support from the Union. While the Act does not prohibit an employer from making statements of existing benefits to his employees before a representation election, it does prohibit promises, implicit or explicit, to induce employees to vote to be unrepresented. Contrary to our dissenting colleague, we find that the latter is involved here.

With regard to the "1–800 hotline," the Board recognizes that when an employer institutes a new practice of soliciting employee complaints during an organizational campaign, there is a compelling inference of an implicit promise to correct the inequities discovered and to convince employees that the combination of inquiry and correction will make union representation unnecessary. *DTR Industries*, 311 NLRB 833, 834 (1993). Accordingly we find that the Respondent's distribution of the pamphlet during the critical period signaled to employees that the Union might not be necessary given the Respondent's willingness to listen to and give consideration to their employment-related concerns. Contrary to our dissenting colleague, we start from the premise that the pamphlet was distributed during the critical period, not that the hotline was instituted during the critical period.

[8] In the successorship situation, the successor employer's obligation to recognize the union attaches after the occurrence of two events: (1) a demand for recognition or bargaining by the union; and (2) the employment by the successor of a "substantial and representative complement" of employees, a majority of whom were employed by the predecessor. See *Royal Midtown Chrysler Plymouth*, 296 NLRB 1039, 1040 (1989). Thus because the employer's obligation to recognize the union commences at that time, as soon as those two events have occurred, the bar to the processing of a petition or to any other challenge to the union's majority status begins, whether or not the employer has actually extended recognition to the union as of that time.

[3] As the Board explicitly stated in *Inn Credible Caterers, Ltd.*, 333 NLRB 898 (2001), the effect of the decision in *St. Elizabeth Manor* was to return to the principle expressed in *Landmark International Trucks*, 257 NLRB 1375 (1981), enf. denied 699 F.2d 815 (6th Cir. 1983), that a successor employer violates Sec. 8(a)(5) if it withdraws recognition before a reasonable period of time for bargaining has elapsed, whether that withdrawal is based on a good-faith doubt of the union's continuing majority status or evidence of actual loss of majority status, supra. Accordingly, the contrary view, as expressed in *Harley Davidson Transportation Co.*, 273 NLRB 1531 (1985), is no longer good law after *St. Elizabeth Manor*.

[4] We find no merit in the Respondent's exceptions to this finding. The Respondent's regional vice president, Joseph Hugar, testified that,

See id. at 294; *Spruce Up Corp.,* 209 NLRB 194, 195 (1974). Both predicate events required by *St. Elizabeth Manor* to establish a bargaining obligation had transpired. First, there is no dispute that the Respondent employed a substantial and representative complement of employees on August 1, 1997,[5] when it effectuated the purchase of the Hill Haven facility and continued the operation of the facility. Second, also on August 1, the Union demanded recognition and requested to bargain with the Respondent concerning the employees' terms and conditions of employment.

By letter dated September 4, the Respondent informed the Union of its refusal to bargain, relying on a decertification petition that had been filed with the Board's Regional Office on August 14. The petition was signed by 50 of 93 employees. The judge found that the Respondent had been aware of the decertification petition since August 13.[6] We find however that under *St. Elizabeth Manor* the Respondent was not privileged to rely on that petition in refusing to bargain with the Union. The Respondent's obligation to bargain with the Union attached when the Union demanded recognition and bargaining on August 1. The successor bar therefore precluded withdrawal of recognition before a "reasonable period of time" for bargaining had elapsed.[7]

In the instant case, it is clear that a reasonable period had not elapsed when the Respondent refused to bargain on September 4. No bargaining had occurred. No negotiations had been scheduled. The Respondent did not reply to the Union's request for bargaining until after it was aware of the decertification petition. On August 19, the Respondent's representative told the Union that he had not yet decided what the Respondent's obligations were under the circumstances. By letter dated August 29, the Respondent informed the Union that until the decertification election determined the Union's majority status, collective bargaining was premature.[8] Accordingly, we find that the Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from and refusing to bargain with the Union.

We agree, for the reasons fully set forth in *Caterair International*, 322 NLRB 64 (1996), that an affirmative bargaining order is warranted in this case as a remedy for the Respondent's unlawful withdrawal of recognition from the Union. We adhere to the view, reaffirmed by the Board in that case, that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) refusal to bargain with the lawful collective bargaining representative of an appropriate unit of employees." Id. at 68.

In several cases, however, the United States Court of Appeals for the District of Columbia Circuit has required that the Board justify, on the facts of each case, the imposition of such an order. See, e.g., *Vincent Industrial Plastics, Inc. v. NLRB*, 209 F.3d 727 (D.C. Cir. 2000); *Lee Lumber & Building Material v. NLRB*, 117 F.3d 1454, 1462 (D.C. Cir. 1997), and *Exxel/Atmos v. NLRB*, 28 F.3d 1243, 1248 (D.C. Cir. 1994). In *Vincent*, the court summarized the court's law as requiring that an affirmative bargaining order "must be justified by a reasoned analysis that includes an explicit balancing of three considerations: (1) the employees § 7 rights; (2) whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act." 209 F.3d at 738.

---

at a meeting with employees on May 14, 1997, prior to the purchase of the Hill Haven facility, he told employees that the Respondent "had an obligation to bargain with them in the event we did become the owner" and that "we were keeping things basically the same." Hill Haven's administrator told the employees at a meeting in July that everyone would be hired. Further, in a letter to the Board's Regional Office dated November 4, 1997, the Respondent stated that "Mr. Hugar made it clear at the meetings that the Company would leave in place all the wages, benefits and working conditions that the employees of Hill Haven enjoyed." Accordingly, we find that the Respondent promised employment to Hill Haven's employees on the existing terms and conditions of employment.

[5] Unless otherwise indicated, all dates are in 1997.

[6] In a telephone conversation on August 19 and again by letter dated August 25, the Union notified the Respondent of a prounion petition dated August 1 and signed by approximately 70 employees. In view of our finding that the "successor bar" precluded the Respondent's withdrawal of recognition, we find it unnecessary to pass on the judge's reasons for his finding that the Respondent unlawfully relied on the decertification petition to withdraw recognition. See generally *Levitz*, 333 NLRB 717 (2001).

[7] Contrary to the Respondent's contention, this finding is consistent with the United States Court of Appeals for the Second Circuit's more restrictive view of the "perfectly clear" caveat of *Burns*. See *Nazareth Regional High School v. NLRB*, 549 F.2d 873, 881 (2d Cir. 1977) (finding that an employer must bargain before setting the initial terms and conditions of employment only if "all of the employees . . . have . . . been promised re-employment on the existing terms."). See also *NLRB v. Amateyus*, 817 F.2d 996, 998 (2d Cir. 1987). During this insulated period, there can be no challenge to a union's representational status. This rule affords the parties and the employees a period of stability to develop their bargaining relationship without interruption. After a reasonable period of time elapses, the employees will have an opportunity to change or eliminate their bargaining representative, if they so choose. *St. Elizabeth Manor*, supra. Like our dissenting colleague, we take seriously the Act's goal of protecting employees' free choice. However, we are also mindful of the Act's competing goal of promoting stable labor-management relations by encouraging the practice and procedure of collective bargaining. Accordingly, for the reasons set forth in the majority opinion in *St. Elizabeth Manor*, we reject our dissenting colleague's criticism of the successor bar doctrine.

[8] As the judge noted, on August 26, the parties entered into a stipulated election agreement and an election was conducted on October 2. The ballots, however, were impounded pending disposition of the unfair labor practice charges.

Although we respectfully disagree with the court's requirement for the reasons set forth in *Caterair*, we have examined the particular facts of this case as the court requires and find that a balancing of the three factors warrants an affirmative bargaining order.

(1) An affirmative bargaining order in this case vindicates the Section 7 rights of the unit employees who were denied the benefits of collective bargaining by the employer's unlawful refusal to bargain. An affirmative bargaining order, with its attendant bar to raising a question concerning the Union's continuing majority status for a reasonable time, does not unduly prejudice the Section 7 rights of employees who may oppose continued union representation because the duration of the order is no longer than is reasonably necessary to remedy the ill effects of the violation.

Moreover, ordering the successor employer to bargain for a reasonable period of time with the incumbent union, as in this case, serves "to protect the newly established bargaining relationship and the previously expressed majority choice, taking into account that the stresses of the organizational transition may have shaken some of the support the union previously enjoyed." *St. Elizabeth Manor*, supra. To require bargaining to continue only for a reasonable period of time, not in perpetuity, fosters industrial peace and stability and will ensure that the bargaining relationship established between the Respondent and the Union will have a fair chance to succeed.

(2) The affirmative bargaining order also serves the policies of the Act by fostering meaningful collective bargaining and industrial peace. That is, it removes the Respondent's incentive to delay bargaining or to engage in any other conduct designed to further discourage support for the Union. It also ensures that the Union will not be pressured, by the possibility of a decertification petition, to achieve immediate results at the bargaining table following the Board's resolution of its unfair labor practice charges and issuance of a cease and desist order.

(3) A cease and desist order, without temporary decertification bar, would be inadequate to remedy the Respondent's violations because it would permit a decertification petition to be filed before the Respondent had afforded the employees a reasonable time to regroup and bargain through their representative in an effort to reach a collective-bargaining agreement. Such a result would be particularly unfair in circumstances such as those here, where litigation of the Union's charges took a couple of years and many of the Respondent's unfair labor practices were of a continuing nature and were likely to have a continuing effect, thereby tainting any employees disaffection from the Union arising during that period or immediately thereafter. We find that these circumstances outweigh the temporary impact the affirmative bargaining order will have on the rights of employees who oppose continued union representation.

Finally, the successor bar rule adopted in *St. Elizabeth Manor* effectively provides the same reasonable period for bargaining here as would an affirmative bargaining order.

For all the foregoing reasons, we find that an affirmative bargaining order with its temporary decertification bar is necessary to fully remedy the allegations in this case.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, The Park Associates, Inc., d/b/a Hill Park Health Care Center, Syracuse, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

CHAIRMAN HURTGEN, dissenting in part.

Contrary to my colleagues, I find that the Respondent did not violate Section 8(a)(5) and (1) by its September 4, 1997, refusal to bargain with the Union. I further find that the Respondent did not violate Section 8(a)(1) by posting a document entitled "Benefits for Non-Union Employees" or by publicizing its "1–800 hotline" whereby employees could obtain answers to employment-related questions.

1. Refusal to Bargain

On August 1, 1997, the Respondent commenced operation of the Hill Haven facility, employing the predecessor's employees. The Union represented these employees under the predecessor. On the same date, the Union demanded that the Respondent recognize and bargain with it as the exclusive bargaining representative. In response to the Union's demand, the Respondent notified it on August 7 that Attorney James Meath would represent the Respondent. The Respondent further informed the Union that Meath was on vacation through August 12 and would contact the Union after his return.

On August 13, before any such contact, the Respondent received a petition, signed by 50 of its 93 unit employees, indicating that they no longer wanted to be represented by the Union. Thereafter, on August 14, an employee of the Respondent filed a petition with the Board for a decertification election.

Having returned from vacation, Meath telephoned the Union on August 18 and 19 at which time Meath informed the Union that the Respondent had received the decertification petition and had not yet determined its course of action. Subsequently, on August 25 the Union sent the Respondent a prounion petition, dated August 1, and signed by 70 employees.

On August 26 the parties entered into a stipulation agreement for a decertification election, scheduled for

October 2. On August 29 the Respondent informed the Union that the scheduled election would determine the issue of majority status and that immediate collective bargaining would be premature. Following repeated bargaining demands by the Union, and claims by the Respondent that it had a good-faith doubt of the Union's majority status, the Respondent notified the Union on September 3 and 4 that it would not bargain with the Union.

The decertification election was conducted on October 2 and the employee ballots have been impounded pending resolution of this proceeding.[1]

Based on the foregoing facts, I find that the Respondent lawfully refused to recognize and bargain with the Union on September 4.[2] In reaching this conclusion, I agree with the judge and my colleagues that, as of August 1, the Respondent was a *Burns* successor.[3] Contrary to the judge and the majority, however, I further find that the Respondent's September 4 refusal to recognize and bargain with the Union was lawful.

As an initial matter, I note that my colleagues do not contest the fact that the Respondent, on September 4, had an uncertainty about the Union's majority status. That was premised on the employee petition of August 13.[4] And, the prounion petition received on August 25 did not resolve the doubt. It simply made it even more uncertain as to whether the employees wanted representation by the Union.

Further, my colleagues do not contend, and the evidence does not establish, that the August 13 employee petition was tainted by the assertedly unlawful conduct of August 1.[5] Nor was that petition tainted by any prior refusal to bargain. The evidence fails to show that the Respondent had unlawfully refused the Union's demand for recognition and bargaining before receiving the petition.[6]

Instead, my colleagues contend only that the Union's majority status was immune from attack for a reasonable period of time after the Respondent commenced operations as a successor employer. See *St. Elizabeth Manor*, 329 NLRB 341 (1999). My colleagues further conclude that because a reasonable period had not passed, the Respondent lawfully could not have refused to bargain with the union, even though such refusal was based on the untainted employee petition.

For the reasons stated in the dissenting opinion in *St. Elizabeth Manor*, 329 NLRB at 344, I disagree with the holding in that case. Accordingly, I conclude that the employees were free to reject the Union, and the Respondent thus, did not violate Section 8(a)(5) by refusing to recognize or bargain with the Union.

My position properly balances the competing interests of fostering collective bargaining and ensuring employee free choice.[7] Under *Burns*, if a majority of the successor's employees come from the predecessor, the union's majority status is presumed to continue, and the successor is obligated to honor the collective-bargaining relationship that existed between the predecessor and the union. However, if there is uncertainty as to whether a majority of the successor's employees wish to be represented by the union, a question concerning representation is raised. "Of paramount importance . . . is the employees' Section 7 right to select a union representative of their choice or to have no union represent them at all, supra.

Here, the contrary result reached by my colleagues demonstrates the enormity of the majority's error in *St. Elizabeth Manor*. Under that majority view, my colleagues have disregarded the will of the majority of the unit employees. They do this by not tallying the results of the October 2 election and by substituting for it an affirmative bargaining order under *Caterair International*, 322 NLRB 64 (1996). In essence, my colleagues do not care to know the results of the election. The effect of this application of *St. Elizabeth Manor* is to "seriously infringe[] on employees' Section 7 rights to engage in or refrain from engaging in union activity." Supra.

Accordingly, I would dismiss the allegations that the Respondent violated Section 8(a)(5) by refusing to bargain with the Union on September 4. I would likewise dismiss the remaining 8(a)(5) allegations based on alleged Respondent unilateral changes to terms and conditions of employment after it lawfully refused to recognize and bargain with the Union.

[1] My colleagues have now dismissed the representation case. They will not count the ballots.

[2] The same is true with respect to the refusal of September 3. For the sake of convenience, I will use the date of September 4.

[3] *NLRB v. Burns Security Services*, 406 U.S. 272 (1972).

[4] *Allentown Mack v. NLRB*, 522 U.S. 359 (1998).

[5] Although the judge found that, prior to the petition, the Respondent had ceased paying pension contributions effective August 1, there was no finding that this asserted 8(a)(5) violation was known by employees or relied on them when signing the decertification petition. And, even had the employees known of this asserted violation, there is no evidence of a causal connection between it and the subsequent employee disaffection from the Union. See *Lee Lumber & Building Material Corp.*, 322 NLRB 175, 177 (1996).

[6] Indeed, the General Counsel concedes on brief that the Respondent had not refused to recognize the Union prior to receiving the petition. Further, in the circumstances (the Respondent's August 7 letter, and its attorney's vacation) the Respondent did not unreasonably delay in responding to the Union's August 1 demand.

[7] While the majority here and in *St. Elizabeth Manor* pays lip service to the notion of balancing the competing interests of labor stability and employee exercise of Sec. 7 rights, in my view their "balance" sacrifices the overriding interest of employee free choice.

2. "1–800 Hotline"

Contrary to the judge and my colleagues, I further find no merit to the allegation that the Respondent violated Section 8(a)(1), in late August 1997, by publicizing an existing hotline answering service whereby employees could leave messages "voicing any questions, comments, or suggestions [they] may have."[8]

First, I reject the judge's finding that the hotline constituted a solicitation of grievances and invitation that employees deal directly with it rather than the Union. I also do not find it reasonable to infer that employees would view it as having that purpose. As the Respondent stated in its literature describing the hotline service, "Our ultimate goal is for the hotline to be a constructive means of communication for resolving unanswered questions and listening to your suggestions. We hope that you find this service useful." In my view, nothing in this language establishes that the Respondent was soliciting employee grievances as a way of undermining union support.

Nor do I agree with the judge's additional finding that the Respondent's publication of its existing hotline constituted an implied promise to remedy employee grievances. Thus, even assuming arguendo that this hotline could be construed as a device for soliciting employee grievances, it is well settled that a "solicitation of grievances is not in and of itself an unfair labor practice. *Hedstrom Co. v. NLRB*, 558 F.2d 1137, 1142 fn. 12 (3d Cir. 1977). "To listen to suggestions does not in and of itself imply that the suggestions will be acted on." *Visador Co.*, 245 NLRB 508 (1979). Section 8(a)(1) is violated only where the solicitation of grievances is accompanied by an express or implied promise to remedy them, and the promise interferes with Section 7 rights. *NLRB v. K&K Gourmet Meats*, 640 F.2d 460, 466 (3d Cir. 1981). Here, contrary to the judge, there was neither an implied or express promise to remedy employee grievances.

Accordingly I would dismiss this allegation.

3. "Benefits for Non-Union Employees"

Finally, contrary to the judge and my colleagues, I find that the Respondent did not violate Section 8(a)(1) by, shortly after it commenced operation of the Hill Park facility, posting a document in late August 1997 listing existing benefits that the Respondent provided to its unrepresented employees. In my view, there is nothing unlawful about an employer's accurately informing employees of the extant benefits that it provides to its unrepresented employees. *Beverly Enterprises, Inc. v. NLRB*, 139 F.3d 135 (2d Cir. 1998). See also my dissenting opinion in *Waste Management of Palm Beach*, 329 NLRB 198 (1999). Contrary to my colleagues, such accurate reporting of existing benefits does not constitute an express promise to increase employees' benefits in order to discourage union support. See, e.g., *HarperCollins San Francisco v. NLRB*, 79 F.3d 1324, 1327 (2d Cir. 1996). Nor can it reasonably be viewed as an implied promise to improve benefits if employees withdraw support from the Union. Rather, dissemination of this information is protected under Section 8(c) of the Act.

Further, the fact that the extant benefits are limited to nonunion employees does not establish illegality. Benefits at unionized facilities are subject to collective bargaining, and thus, an employer can correctly convey to employees the lawful proposition that the employer's unilateral conditions would not necessarily apply to unionized facilities.

Accordingly, I would dismiss this allegation.

[8] In finding the violation, my colleagues start from the premise that the hotline was distributed during the critical period. However, it was instituted prior thereto. Thus, this was an existing service that the Respondent publicized. As such, this publication was not unlawful. See *Weather Shield of Connecticut*, 300 NLRB 93, 96–97 (1990).

Ron Scott, Esq., for the General Counsel.
David C. Burton and *Douglas M. Nabhan, Esqs. (Williams, Mullen, Cristian & Dobbins),* of Richmond, Virginia, for the Respondent.
Charles E. Blitman, Esq. (Blitman & King), of Syracuse, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

KARL H. BUSCHMANN, Administrative Law Judge. This case was tried on June 9 and 10, 1998, in Syracuse, New York, on a consolidated complaint, dated May 26, 1998. The underlying charges were filed by Local 200A, Service Employees International Union, AFL–CIO (the Union) in Cases 3–CA-20898 and 3–CA–21073 and by the Service Employees of Upstate New York Pension Fund (the Fund) in Case 3–CA-21266. The complaint alleges that the Respondent, The Park Associates, Inc. d/b/a Hill Park Health Care Center violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act) by (a) maintaining a wage and benefit program applicable to nonunion employees, (b) maintaining an employee hotline as a alternative to the grievance procedure, (c) notifying employees of a weekly pay schedule as a benefit to unit employees, (d) by discharging employees Tracy Willis and Kathy Harris because of their union support, (e) by failing and refusing to recognize and bargain with the Union, (f) unilaterally ceasing contributions to a pension fund, unilaterally changing hourly wage rates, and (g) by unilaterally changing the biweekly payroll to a weekly payroll system.

The Respondent's answer, timely filed, admits the jurisdictional allegations in the complaint as well as the supervisory status of the individuals alleged in the supervisory hierarchy of Hill Park Health Care Center.

On the entire record, including my observation of the demeanor of the witnesses and after consideration of the briefs

filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

JURISDICTION

The Respondent, located at 4001 East Genesee Sheet, Syracuse, New York, is engaged in the operation of a nursing home. With projected revenues in excess of $100,000 and projected purchases of goods in excess of $5000 directly from outside the State of New York, the Respondent is admittedly an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Union is admittedly a labor organization within the meaning of Section 2(5) of the Act.

Background

Respondent's predecessor, Hill Haven Nursing Home (Hill Haven) was a party to a collective-bargaining agreement with the Union. The agreement was to be effective from March 1, 1995, to February 28, 1998, and expressly recognized the Union as collective-bargaining representative for the following unit of employees:

> All full-time and regular part-time licensed practical nurses, LPN Charge Nurses, Certified Nursing Assistants, Nursing Assistant Trainees, Physical Therapy Aides, Occupational Therapy Aides, Beautician/Hairdressers, Activities Aides, Central Supply Aides, Resident Aides, Housekeeping employees, Laundry employees (and) Maintenance employees employed by the Employer at its 4001 East Genesee Street, Syracuse, New York facility; excluding all other employees, registered nurses, head nurses, LPN assistant head nurses, Medicare Coordinator, casual and per diem employees, other professional employees, dietary employees, office clerical employees, supervisors, guards and other employees as defined in the Act.

The collective-bargaining agreement did not contain a successor clause.

In early 1997 the Respondent began to negotiate with Hill Haven for the acquisition of the facility. Ultimately an agreement was reached whereby the sale would be accomplished through the purchase of the assets.

The Union was apprehensive about the prospect of a new owner and bargained with Hill Haven about the pending sale of the facility, as well as other employment related issues. The Union sent a letter dated June 12, 1997, to the New York State Public Health Council stating its opposition to the change in ownership and alleging, inter alia, that the new company had a history of refusing to honor labor agreements (R. Exh. 8).

The Respondent countered the Union's opposition and met with the employees.

Regional Vice President Joseph Hugar met with the employees on May 14, 1997. He told the employees that the Respondent had the obligation to bargain with the Union and that "we were keeping things basically the same" (Tr. 252).

Larry Alcoff, the Union's director of organizing, testified that Hill Haven's administrator, Nancy Van Derpool, informed the employees at a meeting in July that people weren't going to lose anything, they are not going to change anything and that everybody would be hired.

On August 1, 1997, the Respondent effectuated the purchase of the Hill Haven facility and continued the operation of the facility under the name of Hill Park Health Care Center. The Union promptly requested in writing that the Respondent recognize and bargain with the Union (GC Exh. 5). Respondent's lawyer, David Burton responded by letter of August 7, 1997, informing Alcoff that James Meath who would represent the Respondent was on vacation and would be in touch with the Union on his return (GC Exh. 6). When Alcoff did not receive any message from Meath, Alcoff called him on August 12 and 13, 1997, but was unsuccessful. Not until August 18, 1997, did Meath and Alcott speak about their respective concerns.

In the meantime, on August 14, 1997, Kristina Clapper, an employee, had filed petition with the Regional Office of the National Labor Relations Board to decertify the Union in Case 3–RD–1252 (GC Exh. 8). The petition was signed by 50 employees out of a total of 93 employees (R. Exh. 20). The Respondent had been aware of the decertification petition since August 13, 1997. Meath informed the Union in a conversation of August 19, 1997, that he had a decertification petition and that he had not yet decided what the Company's obligation was under these circumstances. Alcoff had another conversation with Meath where Alcoff informed Meath that he had a prounion petition, dated August 1, 1997, signed by approximately 70 employees (GC Exh. 7). The purpose of the prounion petition was to show to the Company the employee sentiment when the Union demanded recognition. By letter of August 25, 1997, addressed to Respondent's attorney, the Union notified the Respondent of the prounion petition and demanded negotiations over the employees working conditions at certain dates (GC Exh. 11).

On August 26, 1997, the parties entered into a stipulated election agreement whereby the election was scheduled for October 2, 1997 (R. Exh. 29).

By letter of August 29, 1997, the Respondent informed the Union that the election would determine the majority status of the union support among the employees and that until then collective bargaining was premature (GC Exh. 12).

The Union repeated its request to bargain by letter of September 3, 1997 (GC Exh. 13). The parties continued to exchange letters where the Respondent claimed that it had a good-faith doubt about the majority status and the Union disputing the Company's position (GC Exhs. 14, 15, 16). The Respondent, by letter of September 4, 1997, informed the Union of its refusal to bargain (GC Exh. 16).

On September 26, 1997, the Union filed unfair labor practice charges. The decertification election was held on October 2, 1997. The ballots, however, were impounded pending disposition of the unfair labor practice charges.

Analysis

A. A Successor's Bargaining Obligation

The initial question is the status of the Respondent as a successor to Hill Haven. According to the General Counsel, the Health Care Center is a successor under *NLRB v. Burns Security Service,* 406 U.S. 272 (1972), and bound by the collective-

bargaining agreement of the predecessor, Hill Haven. Conceding its successor status, the Respondent argues, however, that irrespective of its status as a "*Burns*" successor, it is not bound by the collective-bargaining agreement, because the purchase agreement does not contain a successor clause, and unless the acquiring party made it "perfectly clear" that it would assume the collective-bargaining agreement, that obligation ceased.

The General Counsel agrees that a successor is bound by the predecessor's collective-bargaining agreement only when "it is perfectly clear, that the new employer plans to retain all of the employees in the unit" and consult with their bargaining representative before he fixes terms. *Burns,* supra at 294.

The parties rely on *Spruce Up Corp.,* 209 NLRB 194 (1974), to argue their respective positions. There, the Board clarified the "perfectly clear" issue. In circumstances, where "the new employer has either actively, or, by tacit inference, misled employees into believing that they would all be retained without changes in their wages, hours and conditions of employment, or . . . where the new employer . . . has failed to clearly announce its intent to establish a new set of conditions prior to inviting employees to accept employment," the exception has been satisfied. *Spruce Up Corp.,* supra at 195.

Here, the record shows that Hugar, when meeting with the employees on May 14, 1997, stated in answer to a variety of questions that he could not give specifics but that the new Company would be "keeping things basically the same" (Tr. 252). In July 1997, Administrator Van Derpool told the employees that everybody would be hired by the new owner, that the employees would not lose anything and that they (the new owner) would not change anything. In a letter, dated November 4, 1997, addressed to the Board's Regional Office, the Respondent expressed its factual and legal position. The Respondent stated: "Finally, Mr. Hugar made it clear at the meetings that the Company would leave in place all the wages, benefits, and working conditions that the employees of Hill Haven enjoyed" (GC. Exh. 27, p. 2). In light of this evidence, I find Hugar's testimony less than convincing and inconsistent when he testified that he responded at the May 14 meeting to an employee's question about the pension plan as follows (Tr. 252):

> Yes. Some, somebody asked if we were going to have a pension, and I did tell them that again we would have to bargain for those things. They asked if any of our facilities had a pension, and I said, "No, they do not currently have pension in our current facilities."

Hugar also testified that he told the employees "that their current contract did not have a successor clause, but that we did have a right to bargain with them, and we had an obligation to bargain with them in the event we did become the owner" (Tr. 252).

This testimony, according to the Respondent, made it clear to the employees that the new owner would not assume the existing collective-bargaining agreement.

Even assuming arguendo, that Hugar had made the statements to the employees including the one about the pension plan, the Respondent's ambivalence about its commitment under the contract was indicated from a technical viewpoint, but only if these remarks were considered out of context. However, in the context of all the surrounding circumstances, the overall message given to the employees who were apprehensive about the new company, was that they would all be hired and that nothing would change. The Respondent thereby attempted to allay the employees' fears about the new owner. I accordingly agree with the General Counsel that the employer has actively and certainly by tacit inference misled the employees into believing that no changes were contemplated in their working conditions. Under those circumstances, I find that the Respondent is a "perfectly clear" successor bound by the collective-bargaining agreement and obligated to bargain with the Union about any changes in the employees' conditions of employment.

B. The Unilateral Change in Working Conditions

The Respondent initiated three important changes in the employees' working conditions, even though it was bound by the collective-bargaining agreement and even though it was required to—but failed—to bargain with the Union about the changes. The first change alleged in the complaint was the discontinuance of contributions to the pension fund which had previously been provided on behalf of the employees. The collective-bargaining agreement provided for the employer's contributions to the Service Employees of Upstate New York Pension Fund (GC Exh. 2, p. 33). The pension fund contributions like rates of pay are considered terms and conditions of employment. Nevertheless, as of August 1, 1997, the Respondent admittedly discontinued making the required contributions.

The Respondent makes several arguments, including the absence of a successor clause in the contract. The perfectly clear successor of course must assume all the obligations of the contract irrespective of the absence of a successor clause. The Respondent also argues that the decertification petition was circulated prior to the employees' receipt of their first paycheck. As discussed below, the Respondent has improperly relied on a good-faith doubt about the Union's majority status. Accordingly, prior to making any unilateral changes in the employees' terms and conditions of employment, the Respondent was required to bargain with the Union. I accordingly find that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to adhere to the collective-bargaining agreement and discontinuing the pension contributions and by failing to bargain collectively with the Union about any changes in the employees' working conditions.

The second unilateral change made by the Respondent was a change in the rates of wage rates of several employees, including Kathy Harris. The employee wages are covered in the collective-bargaining agreement (GC Exh. 2, p. 28). The record shows that the hourly pay of Harris was reduced from $11.70 to $11.43. The Respondent argues that Harris did not discover the change in pay until August 13, 1997, well after the decertification petition had been prepared. Moreover, according to the Respondent, the change in pay was an inadvertent error, which not only affected Harris but several other employees as well. The Respondent also asserts that the errors have been corrected. The record does not support the argument that the unilateral changes in pay were isolated errors and that they

all have been corrected. Indeed the General Counsel has submitted additional payroll records and offered them as exhibits into the record in accordance with the discussions on the record (GC Br. p. 32).[1] According to these records, the Respondent has made numerous changes in the employees' hourly pay, as pointed out in greater detail in General Counsel's brief (GC Br. pp. 31-34). For example, the record establishes that the hourly pay rates of Jennifer Young, Belinda Clark, and Sonny Drogozowsky were reduced by about 15 to 25 units per hour. Their pay was ultimately corrected. The rates of certain employees were increased. The pay of Jennifer Dunbar, Shameckia Davis, and Michelle Ballew were increased according to the calculations made by the General Counsel. He further represents that a perusal of the rates for 28 employees shows that the Respondent unilaterally changed other employees' wage rates as well (GC Br. p. 32). I am persuaded that a perusal of these records shows that the Respondent effectuated changes in the pay of the employees and that this was done contrary to the agreement and without bargaining with the Union. I accordingly find that this conduct violated Section 8(a)(5) and (1) of the Act.

The third change was one which the employees had wanted and one which the Union had earlier included in its bargaining request. On September 23, 1997, the Respondent announced to the employees that the biweekly payroll period would be changed to a weekly payroll effective October 3, 1997. The announcement was made 9 days prior to the election resulting from the decertification petition. The Respondent does not contest that it made the change but argues that the change was made for legitimate business reasons to fit the overall "company roll out" considering the established computer and accounting systems (Tr. 271).

The Respondent's position does not address the issue of bargaining. It is clear that this change affected the employees' working conditions and should have been the subject of bargaining. The Respondent's failure to do so violated Section 8(a)(5) and (1).

In addition, as alleged in the complaint, the announcement of the change to a weekly payroll, considered a benefit to the employees, was presumptively intended to affect the employees' sentiment shortly prior to the election. The timing of the policy change, its effect 1 day after the election and the announcement of the benefit, 9 days prior to the election, shows an antiunion motive in violation of Section 8(a)(1) of the complaint, particularly here where the Respondent had waited for 2 months after its takeover without changes in this regard.

C. The Decertification Petition

The record shows that the Respondent recognized the Union when the purchase of the predecessor's assets had been consummated. It is well settled that the incumbent union enjoys the presumption of majority status among the employees, unless the Union had lost the support among the employees or the employer had a good-faith doubt about the Union's majority support among the employees. Here, the Respondent officially notified the Union verbally on September 3, 1997, followed by letter of September 4, 1997, of its refusal to recognize the Union (GC Exh. 16). The Company based its refusal on the decertification petition filed on August 14, 1997, signed by 50 of the 93 employees.

On August 25, 1998, the Union had sent a letter to the Company and referred to a prounion petition signed by a majority of the bargaining unit employees in support of the Union (GC Exh. 11). The Company was accordingly made aware that the Union claimed its majority status despite the decertification petition. Yet the Respondent in its September 4 letter rejected the Union's claim of majority status and unequivocally denied the Union's demand to bargain. In the face of such competing evidence, the Respondent unlawfully relied on the antiunion petition to withdraw recognition, especially where as here the Respondent had violated the Act in other respects as well. *La Verdiere's Enterprises,* 297 NLRB 826 (1990).

D. Wage and Benefit Program for Nonunion Employees and the Employee Hotline

The six-page document entitled "Benefits for Non-Union Employees" is alleged to have been posted since August 1, 1997. Applicable to nonunion employees only, such conduct is a violation of Section 8(a)(1) as it has the inherent effect of interfering with the employees' Section 7 rights. The General Counsel further argues that the Respondent's conduct tainted the decertification petition. The evidence in this regard is conflicting with four witnesses for the General Counsel testifying that a wage and benefit package limited to nonunion employees was posted prior to the filing of the decertification petition and five witnesses for the Respondent testifying that the Respondent's employee benefits outline was not posted during the time the decertification petition was circulated. Alcoff recalled during his testimony that he received the document from Van Derpool at a meeting in July 1997 and that he heard from employees at the facility that the item had been posted in late July. Employee Mildred Bertolero testified that she noticed the notice posted about a week before August 1, 1997, on a bulletin board near the timeclock. The accuracy of her testimony was compromised by her two affidavits, dated October 29, 1997, and April 14, 1998, respectively. In the one she stated that she saw the posting after the change in ownership of August 1, 1997, and in the other she stated that she was reasonably certain that it was posted before August 1, 1997 (R. Exhs. 44, 45). While I believe that Bertolero made a conscientious effort during her testimony to recall the precise time of the posting, I find the testimony unreliable in the face of her prior affidavits. The other witnesses, Tracy Willis and Kathy Harris, testified that they noticed the notice posted during July 1997 near the timeclock. I found the testimony of Harris and Willis generally unpersuasive. They testified at length about their work records and the circumstances of their discharges. Their testimony was inconsistent with the written documentation in the record and I believe that their recollections about the time of the posting was similarly flawed.

Moreover, the Respondent's witnesses, Kristina Clapper, Carol Sinton-Adams, Frieda Heaney, and Jennifer Dunbar all of whom were instrumental in circulating the decertification peti-

[1] The exhibits (GC Exhs. 33-47) are hereby admitted into the record in accordance with the understanding reflected in the record (Tr. 476-478).

tion, testified unequivocally that they did not see the document posted during the time they circulated the petition, nor did they tell other employees that they would benefit by getting a six percent raise as reflected on the posting if they voted against the Union. In addition, Hugar testified that the document was not posted anytime in July 1997. Deborah Boland, director of nursing, similarly testified that she had not noticed the document prior to the filing of the petition.

The testimony about the "1-800 hot line" was similarly controverted. The complaint alleges and the General Counsel argues that the Respondent had instituted the hotline as reflected in a two-page document urging employees to call a 1-800 number to obtain information and answers to employment related questions directly from management (GC Exh. 17). The publication and the maintenance of this conduct is alleged as a violation of Section 8(a)(1) of the Act. The General Counsel similarly argues that the Respondent's conduct relating to the hotline had a tainting effect on the decertification petition. The same witnesses, Bertolero, Harris, and Willis testified for the General Counsel about the timing of the hotline posting.

Mindful that the General Counsel has the burden to show that the pay information for nonunion employees and the initiation of the hotline were actually published or posted prior to the filing of the decertification petition, I find the testimony of the General Counsel's witnesses less than convincing, particularly in the light of the unequivocal testimony given by the Respondent's witnesses. I accordingly reject the argument that the petition was tainted by the alleged conduct.

However, as alleged in the complaint, the record shows and the Respondent does not contest that the conduct namely the posting of the wage and benefit program and the institution of the hotline, occurred at least sometime in the latter part of August 1997. An employer who announces or offers benefits which are limited to nonunion employees violates Section 8(a)(1) of the Act. *Libbey-Owens-Ford Co.,* 285 NLRB 673 (1987). Likewise when an employer solicits grievances from the employees, it is assumed that the employer will remedy them. Moreover a hotline is an obvious invitation to deal with the employees directly and bypass the union. This conduct violates Section 8(a)(1) of the Act. *Master Plastering Co*., 314 NLRB 349 (1994).

E. The Discharges

Finally, the complaint alleges and the General Counsel argues that the Respondent violated the Act by discharging employees Traci Willis and Kathy Harris because of their union support. The record does not support the allegations. Willis has been an employee of Hill Haven and the Respondent since March 1997. She was classified as a certified nurses' aide or CNA. She became an open union supporter in August 1997. She had signed the prounion petition (GC Exh. 7). She also wore a button with the inscription "Vote Know." Willis had changed the "Vote No" button to "Vote Know." She may also have been observed by management as she spoke with Alcoff in August 1997 when they discussed the Union. The record also reflects a brief conversation between her supervisor, Richard Kinney and Willis where Kinney told her in August after a staff meeting that Hugar had made a statement to the effect that Willis seemed disinterested in getting the Union out of the facility.

The General Counsel argues that Willis' discharge on December 29, 1997, was motivated by the Respondent's union animus. Willis, the only witness in support of the allegations, testified at length about her work history and the incident which precipitated her discharge. On December 29 she was summoned to the administrator's office where Administrator Peggy Davis-Wilson informed Willis in the presence of other supervisors that she was discharged because she had shaved off a patient's mustache against his will.

Willis did not dispute the fact that she had shaved the patient's mustache but stated in her testimony that the patient was bedridden, unaware of his surroundings and unable to communicate. She also stated that she shaved his mustache for sanitary reasons because his face was covered with food particles and mucus. Several witnesses for the Respondent testified that the patient, although bedridden, was aware of his surroundings, that he was proud of his mustache and that Willis' conduct was contrary to his will and the will of his family. According to the Respondent, Willis was an employee with a poor work record who had accumulated numerous disciplinary actions warranting the termination for her final offense.

The General Counsel concedes that several of Willis' past offenses were of such nature as to warrant immediate discharge, but questioned whether the numerous write-ups were genuine, and theorizes that it is possible that Willis had never seen the written reprimands. In this regard, I find that the Respondent's evidence against Willis is so overwhelming and credible that her discharge would have happened even in the absence of her union activity. *Wright Line,* 251 NLRB 1083 (1980). However, I find that Harris' union sympathy and her union activity were relatively insignificant and that there was no showing of its causal connection to her discharge. The testimony of Richard Kinney who is no longer employed by the Respondent showed that many of Willis' writeups were prepared by him while he was her supervisor and that the written reprimands were genuine. Deborah Boland, a registered nurse, testified about the significance of the mustache to the patient and his adverse reaction to the shaving incident. Jean Kopack, who was the head nurse when the incident occurred and who had prepared the final writeup testified that the patient was in tears after his mustache had been shaved off and that the action was a violation of the patient's rights and the standards of practice at the nursing home. The record contains other write-ups for various offenses, including her refusal to change a patient's clothing who was incontinent, being disrespectful toward a patient, unauthorized telephone calls from a patient's telephone, unauthorized sleeping on the job, improperly turning the residents, etc. Willis' reaction to the numerous write-ups was that she had never seen them, was unaware that she had been disciplined and that her signature had to be reflected on the written documents to be valid. Willis who was employed for less than a year at the facility could not convincingly refute the numerous reprimands. I find that the shaving incident was "the straw that broke the camel's back" after a series of other infractions. I accordingly dismiss this allegation.

The other employee alleged to have been discharged for her union activity is Kathy Harris. She began her employment in May 1997 as a licensed practical nurse (LPN). She was terminated on January 2, 1998, because she did not live up to the standards of a charge LPN.

The General Counsel argues that Harris engaged in union activities and should not have been fired but should simply have been demoted if her employer felt that she did not meet the qualifications of a charge nurse. Harris' union activities included the wearing of a union button until October 1997, making complaints to management of having to attend mandatory antiunion meetings and voicing her support for the Union.

Harris admitted to having received two writeups, but could not recall having been counseled or disciplined for any other infractions. The record, however, shows that she had received numerous writeups by different supervisors, including Richard Kinney who is no longer employed by the Respondent and who testified credibly about the existence of the documented misconduct. She was written up for failure to sign medication sheets on May 21 and again on July 24, 1997. Other infractions include rudeness to another employee, failure to administer drugs to a patient, tolerating deficient conditions in an entire unit, absenteeism, showing of anger to a patient, and the failure to clean a patient. The testimony of Supervisor Boland showed that one of the medical directors of the facility had been particularity critical of Harris' performance. According to Boland, it is unusual for medical personnel to voice their criticism of nurses in this facility, but Harris had one of the worst performance records at the facility. In short, the Respondent had ample reasons to terminate the employee. Under *Wright Line,* it is clear that she would have been discharged even in the absence of any union activity.

However, I find that the record simply does not show that either Harris or Willis were discharged because of their union activities. The 8(a)(3) allegations in the complaint are therefore dismissed.

CONCLUSIONS OF LAW

1. The Respondent, The Park Associates, Inc. d/b/a Hill Park Health Care Center is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Local 200A, Service Employees International Union, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. Service Employees of Upstate New York Pension Fund is one of the Charging Parties and referred to as the Fund.

4. At all times, the Union has been the collective-bargaining representative of the employees in the following appropriate unit under Section 9(b) of the Act:

> All non-professional employees, including licensed practical nurses and other non-professional employees, excluding registered nurses, other professional employees, office clerical employees, guards and supervisors as defined in the Act.

5. The collective-bargaining agreement dated March 1, 1995, between the Union and the Respondent's predecessor, Hill Haven, recognized the Union for the following employees:

> All full-time and regular part-time Licensed Practical Nurses, LPN Charge Nurses, Certified Nursing Assistants, Nursing Assistant Trainees, Physical Therapy Aides, Occupational Therapy Aides, Beautician/Hairdressers, Activities Aides, Central Supply Aides, Resident Aides, Housekeeping employees, Laundry employees (and) Maintenance employees employed by the Employer at its 4001 East Genesee Street, Syracuse, New York facility; excluding all other employees, registered nurses, head nurses, LPN assistant head nurses, Medicare Coordinator, causal and per diem employees, other professional employees, dietary employees, office clerical employees, supervisors, guards and other employees as defined in the Act.

6. The Respondent is a "perfectly clear" successor to Hill Haven and was bound to maintain the terms and conditions of employment as they existed at the moment of successorship.

7. By maintaining and publishing a wage and benefit program applicable to nonunion employees only, the Respondent violated Section 8(a)(1) of the Act.

8. By maintaining and publicizing an employee hotline in order to bypass the Union and to solicit grievances, the Respondent violated Section 8(a)(1) of the Act.

9. By notifying unit employees that their biweekly payroll would be changed to a weekly pay system the Respondent violated Section 8(a)(1) of the Act.

10. By unilaterally changing the working conditions of its employees in the three following respects, the Respondent violated Section 8(a)(5) and (1) of the Act.

(a) Ceasing contributions to a pension fund on behalf of unit employees.

(b) Changing the hourly wages of Kathy Harris and other unit employees.

(c) Converting the existing biweekly payroll system to a weekly payroll system for unit employees.

11. By refusing to recognize and bargain with the Union on behalf of the unit employees.

12. The unfair labor practices are then affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(1) and (5) of the Act, I find it necessary to order the Respondent to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent unlawfully made changes in the employees' terms and conditions of employment without bargaining with the Union, and contrary to the existing terms and conditions of the collective-bargaining agreement, I shall order the Respondent on request bargain with the Union on behalf of the unit employees relating to the terms of the collective-bargaining agreement and rescind all or part of the unilateral changes to the preexisting terms and conditions of employment. The Respondent must be ordered to remit to the Fund the contributions which the Respondent failed to make plus additional amounts if any, as prescribed in *Merryweather Optical Co.,* 240 NLRB 1213 (1979). In addition, the Respondent must make whole the employees for the Respondent's

unilateral changes in their pay rates as specified in *Ogle Protection Service,* 183 NLRB 682 (1970), enfd 444 F.2d 502 (6th Cir. 1971). The precise amounts to be computed during the compliance stage of the proceeding, with interest as computed in *New Horizon for the Retarded,* 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, The Park Associates, Inc., d/b/a Hill Park Health Care Center, Syracuse, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining and publicizing a wage and benefit program applicable to nonunion employees only.

(b) Maintaining and publicizing an employee hotline for unit employees to solicit their grievances and to circumvent the Union as their bargaining representative.

(c) Notifying unit employees of a benefit that their biweekly pay system would be changed to a weekly pay system.

(d) Making unilateral changes in the unit employees' working conditions or changing the terms of the collective-bargaining agreement without bargaining with the Union on behalf of the unit employees.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request of the Union rescind all or part of the unilaterally made changes in terms and conditions of employment and retroactively restore preexisting terms and conditions of employment and, on request, bargain in good faith with the Union as the exclusive bargaining agent of the above appropriate unit of its employees with respect to their wages, hours, and other terms and conditions of employment and embody any understanding reached in a signed agreement.

(b) Remit to the Fund the contributions while the Respondent failed to make plus interest as set forth in the remedy section of this decision.

(c) Make Kathy Harris and other employees whole for the unlawful changes in their hourly rate, as specified in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its Syracuse, New York facility, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of the business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT maintain and publicize a wage and benefit program applicable to nonunion employees only.

WE WILL NOT maintain and publicize an employee hotline for unit employees to solicit their grievances and to circumvent the Union as their bargaining representative.

WE WILL NOT notify unit employees of a benefit that their biweekly pay system would be changed to a weekly pay system.

WE WILL NOT make unilateral changes in the unit employees' working conditions or changing the terms of the collective-bargaining agreement without bargaining with the Union on behalf of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL on request of the Union rescind all or part of the unilaterally made changes in terms and conditions of employment and retroactively restore preexisting terms and conditions of employment and, on request, bargain in good faith with the Union as the exclusive bargaining agent of the above appropriate unit of its employees with respect to their wages, hours, and other terms and conditions of employment and embody any understanding reached in a signed agreement.

WE WILL remit to the Fund the contributions while the Respondent failed to make plus interest.

WE WILL make Kathy Harris and other employees whole for the unlawful changes in their hourly rate, plus interest.

THE PARK ASSOCIATES, INC., D/B/A HILL PARK HEALTH CARE CENTER